



DCAM's Energy Saving Performance Contracting Program Forum, Thursday June 12, 2003

DCAM appreciates the participation of the ESCo representatives at our Energy Saving Program Forum on June 12, 2003. The following document summarizes some of the questions and issues that were raised either at the meeting or were subsequently received.

DCAM intends to evaluate and integrate, where applicable, these comments and alternatives to our current program in the interest of fostering more competition from the ESCo community. Additionally, DCAM will be researching and evaluating other state energy saving programs along with the federal programs to learn from them and to incorporate aspects of their programs where appropriate into our program.

Though DCAM responses to all questions posed are not included here, all questions received will be considered as we develop future RFPs. Additionally, DCAM reserves the right to provide additional detail on the issues raised here – either in a subsequent iteration of this document or otherwise.

If you have any further questions or comments on information contained here or on DCAM's Performance Contracting Program, please contact Program Manager, John DiModica at 617-727-4030 x454 or john.dimodica@dcp.state.ma.us

Questions and Answers from Forum

Overall Program

1. *Can DCAM consider the process used by the FEMP program of pre-qualifying firms to do energy conservation work statewide? This would require less up-front capital outlay by ESCos in proposal development so they can concentrate on the program outcomes.*

A: DCAM feels that proposal-based solicitations offer user agencies the best option for realizing the benefits of performance contracting. DCAM will continue to use the RFP-driven process for many projects. DCAM has considered the Federal “Super ESPC” approach and feels it may have merits for some types of projects, and has considered this option for some projects or groupings of projects. There is the potential that DCAM will utilize this method in the future, especially for replicable or multi-site projects or those with smaller individual project values.

2. *What are the perceived risks being considered in the “Protection of the Commonwealth against Risk” evaluation criteria?*

A: Some of the issues considered in the category of “Protection of the Commonwealth against Risk” include: changes in prices, availability of on-site or local support, source of project financing, proportion of utility/MTC funding, ability to pass DEP or other regulations.

3. *Is there any historical information on percentage change in scope and dollars for previously awarded projects?*

A: To the extent that such information is available, it may be attained from DCAM. DCAM does not routinely collect statistics detailing the percentage change in scope of projects; information on total value of projects is readily available from DCAM databases and with the exception of unforeseen circumstances is typically the same value as that noticed at time of project award.

4. *Who is responsible for cogen project interconnection issues and standards?*

A: The ESCo is responsible for cogen project interconnection issues and standards when cogen is included in a project. A set of standards for interconnection from the MTC’s Distributed Generation Collaborative may provide valuable information for any cogen interconnection issues.

5. *Can maintenance savings be included in the proposed cash flow?*

A: Maintenance savings are to be noted in proposals, but not included in the proposed cash flow pro formas. Mass General Law Chapter 25A does not allow these savings to be formally weighed in the evaluation process.

Project Development

1. *The section of M.G.L. Ch. 25A that restricts state agencies from managing capital projects of a limited capital cost should be changed by increasing this limit to allow state agencies to manage more of their own projects.*
 - A. State law currently allows DCAM to delegate to state agencies the authority to enter into energy saving contracts with an estimated construction costs of less than \$200,000. DCAM is considering requesting the legislature to increase the \$200,000 dollar cap.
2. *Can the bidding procedures for smaller projects be streamlined to make for a less cumbersome process?*
 - A. DCAM is considering alternatives for streamlining the process for projects under \$200,000 (see #1 above).
3. *Grouping a number of smaller projects together to make a larger project would make it more interesting for some ESCos.*
 - A. DCAM is considering this approach for a future RFP.
4. *ESCos wanted some way to predict and plan the amount of work they might expect from the Commonwealth.*
 - A. DCAM can not provide exact information about future RFPs. Our goal is to advertise 3 or 4 RFPs a year of different size and project scope. However, the time required to work with a facility to prepare an RFP for advertisement is fluid and can not be predicted.
5. *FEMP's Super ESPC process was mentioned a number of times as a good way to streamline the project development process with a general RFQ qualifying process.*
 - A. DCAM is currently researching other state programs along with the federal programs to evaluate options for modifying our energy savings program.
6. *A project specific RFQ process was raised as another option to limit the competition on a given project.*
 - A. See the answer to question #5 above.
7. *It was noted that competition was good for the UMass Amherst RFP and that certification limits do not seem to be stifling competition.*
 - A. DCAM was pleased with the number of firms which submitted proposals in response to that RFP. However, we recognize that some firms might not be able to submit proposals above a certain certification limit.
8. *Can DCAM revisit the need for certification limits? The current process affects the competitiveness of proposals since it may limit an ESCo's ability to include certain energy conservation measures.*
 - A. State law, M.G.L. Ch. 25A, requires that all ESCos/Contractors be certified as eligible to submit proposals up to specified project amounts. However, DCAM will issue RFPs of various size and project scopes to encourage competitiveness in ESCos proposals.

RFP Development

1. *The concept of using an RFQ process to limit the pool of proposers to a pre-qualified list of ESCos was suggested as a way to make projects more attractive to ESCo's since they would have a better chance of winning.*

A. DCAM is currently researching other state programs along with the federal programs to evaluate options for modifying our energy savings program. Two RFP's issued recently have reflected some changes to DCAM's process. Although the process in these RFPs does not create a pre-qualified list, it does potentially reduce the cost and time needed to prepare a proposal. These changes may or may not be evident in future RFPs, but other changes may also be considered.

2. *The federal RFQ process was mentioned as preferable to ESCos when compared with our RFP process for several reasons. First, the federal process uses a Master List of qualified companies. Federal agencies then select the company they want off of the list and request a project cost. Second, ESCos expressed concern with the time and cost required to prepare a proposal in response to a DCAM RFP. The RFQ process is easier for facilities as they can select a company, interview them, and start construction sooner than under the DCAM RFP process. Finally, companies stated that rather than spending thousands of dollars to prepare a proposal, they would prefer to invest that money into one of our projects.*

A. Please see the answer to question # 1 of this section above.

3. *Concern was expressed with the high level of sophisticated engineering required in our proposals. It was noted that this might give us a false sense of security that the selected company would be able to provide the services and guaranteed savings included in their proposal.*

A. One criterion of proposal evaluations is technical expertise. Most projects require sophisticated engineering, thus the Commonwealth is interested in companies who can demonstrate their abilities. Technical expertise is only one criterion the Commonwealth uses to evaluate proposals, many other criteria are weighed in order to fully assess a Company's services and guarantee of savings.

4. *Concern was also expressed with the need for ESCos to include full engineering and auditing data in their proposals. Certain companies purposefully do not include all this data in order to submit smaller proposals, but are concerned that projects are then awarded to the ESCo, which submitted a larger proposal. Can DCAM limit the size of the proposals to a certain number of pages in order to limit the need for ESCos to outspend each other with development of proposals?*

A. The Commonwealth does not require full engineering and auditing for its proposals. Companies who take more time to research and develop their proposal may always provide more information in their proposal; the Commonwealth may or may not see value in such additional information. DCAM is working toward streamlining its RFPs so that more consistent information is given by different companies (i.e. the ECM Form), but currently does not see any value in limiting the proposal size.

5. *The idea of allowing ESCos to use a representative sample of buildings to develop proposals was presented as one way to reduce the cost of preparing a proposal for a given facility.*
- A. Please see the answer to question #1 of this section above.
6. *It was suggested that DCAM better define the scope of an RFP by providing estimates for the desired total project cost and by defining the expected project scope so ESCos will have a better idea of what the Commonwealth is looking for in its proposals.*
- A. The Commonwealth strives to provide a defined project scope that also encourages ESCos to propose original measures and solutions. The Commonwealth will work with facilities and, at times, consultants, to define project scopes as clearly as possible.
7. *Caution was urged on prescribing specific measures in the RFP as it would limit creative solutions. It was suggested that after the award creative solutions be allowed to modify the original proposal.*
- A. Prescriptive measures in the RFP are usually requested by the facility, and provide some clarity to the project scope as discussed in # 6 in this section above. ESCos are allowed to find alternative solutions in the detailed audits, as long as they are consistent (as outlined in the RFP) with the project cost, savings, and other guarantees the ESCo provided in their proposal.
8. *Companies expressed an interest in having RFPs of varying size and scope, e.g. less than \$1 million, between \$1 and \$5 million, and greater than \$5 million.*
- A. DCAM develops RFPs on the basis of project needs, not necessarily on the basis of developing projects of specific sizes. Where possible, DCAM will work with its user agencies to provide detail as to expected/desired approximate project size, in order to help proposers gauge the approximate project size on which to base proposals. For project's under \$1 million total investment, DCAM is working to develop alternative processes that are less time consuming for the Commonwealth and for the proposers; more information on this process may be forthcoming with the issuance of such smaller-sized project opportunities.
9. *It was noted that capturing O&M savings would enhance the program since ESCos would be able to capture those value added savings associated with energy conservation measures that could be implemented with little or no added cost.*
- A. Chapter 25A does not allow the Commonwealth to include O&M savings in financial evaluations. The Commonwealth does consider O&M savings and costs in its overall evaluation of a proposal, but does not allow them to be considered directly in project formulas.
10. *It was mentioned that the goal of having the ESCo take responsibility for maintenance of measures over the life of the project is in conflict with the interest of the ESCo to present the lowest cost project and therefore the least maintenance.*
- A. As the Commonwealth's operating budgets are constrained, DCAM has strived to create a program that does not increase the maintenance costs and burden for an agency. So noted, it is the intent as the program goes forward to establish a more rigorous

commissioning process. At the point where maintenance responsibilities are “handed-off” to the facility staff, they will have been properly trained in operation and maintenance and will receive intermittent assistance from the ESCO for maintaining the equipment that has been installed as part of the contract.

11. Can DCAM pre-qualify a rebate level? NSTAR liked the idea of ESCOs taking risk for rebates, just so long as utility doesn't have to guarantee rebates to multiple companies.

A. It would be difficult to pre-qualify a rebate level for a project prior to, or concurrent with the issuance of an RFP, as the Commonwealth does not have enough information about savings opportunities at that time. ESCOs can work with utilities to determine the expected rebates. If ESCOs use rebates in their cashflows and project costs, they, not the utility, must guarantee them.

12. DCAM should document facility hours of operation and occupancy levels up-front in the RFP. This would help with items such as lighting.

A. Most RFPs provide this information. DCAM will plan to document this and any additional information as is available to the best of the Commonwealth's ability, however neither DCAM nor the facility shall be responsible for the accuracy of the information,. ESCOs are ultimately responsible for confirming any information required during their proposal preparation.

Proposal Evaluation

1. *Could the timeframe for the evaluation review period be made more definitive? Or Shorter?*

A. While no exact standard exists for the review timeframe for proposal review, DCAM and its user agencies review, evaluate and select proposals as expediently as possible given various considerations inherent in each evaluation and selection process.

2. *Communication: DCAM should consider better/more frequent methods of communicating with project proposers regarding timing, etc.*

A. DCAM will make every reasonable effort to communicate proposal, evaluation, and project details in a fashion so as to provide sufficient information to all proposers, contractors and other partners.

3. *Could DCAM consider evaluating projects on a sample methodology (like the Federal Government's "Super ESPC" process)?*

A. DCAM reserves the right to utilize different evaluation and selection methodologies for various RFPs and projects. Each RFP is developed on a project-specific basis. It is conceivable that DCAM could issue proposals on a sample methodology in the future if it is judged to be the most effective method.

4. *Does the certification process cause DCAM's evaluations to be skewed toward the largest/most expensive projects? Is there a loss of competition because of this? Are the larger size projects always the best projects?*

A. DCAM's Certification process is a legally-mandated threshold criterion that firms must meet prior to submitting project-specific ESPC proposals. In this step, the DCAM Certification Office reviews data provided by firms to determine if they meet minimum standards such as # of years in business, bonding capacity and track record on previous projects. Firms that meet the minimum certification thresholds receive a certificate that indicates DCAM authorization for such firms to conduct certain categories of work up to specific dollar amounts. Only firms that receive such certification are permitted to submit proposals for the ESPC program.

Proposals considered are then evaluated on a number of other criteria detailed in each RFP. Evaluation and selection of ESCOs or contractors for projects is not skewed toward the largest or most expensive projects, nor are such proposals always likely to be considered the best projects. DCAM does not feel that differential Certification limits attained by different companies results in any loss of competition.

5. *Could DCAM consider any measures to qualify firms' abilities to guarantee savings associated with their projects?*

A. DCAM requires firm financial guarantees of savings for all projects. DCAM always considers a firm's ability to guarantee savings as a criterion (protection of the State against risk) in proposal evaluation. In response to perceived changes in the availability of long-term efficiency guarantee bonds by our industry partners, DCAM is considering alternative instruments to provide adequate savings guarantees. No firm positions have

yet been taken by DCAM on exactly which alternative instruments will be accepted in lieu of efficiency guarantee bonds.

6. *Could DCAM consider the award of merit points or some other designation for identification and inclusion of renewable energy opportunities/options in firms' proposals?*

A. DCAM evaluates proposals individually based on the criteria published in each RFP. When DCAM and a facility have a specific desire to include renewable energy in a project, it will be clearly stated in the RFP. DCAM is always open to considering all cost effective investments, including renewable energy, that any ESCo or contractor wishes to propose for any project.

7. *How does the quality of the design, to meet the needs of the individuals working in a space, get factored into our award criteria?*

A. Quality of design is typically considered under the category of “technical feasibility” and is something that is carefully reviewed by facility and DCAM staff. Facility staff is always represented on evaluation committees and is invited to express the specific needs and preferences of the facility staff as well as of the individuals working at the facility.

8. *To what extent are LEED recommendations given weight?*

A. DCAM clearly states the evaluation criteria for each project in the RFP. LEED certification may be offered by an ESCo or contractor for any project or individual building and may be judged favorably by DCAM and the agency receiving the project, provided that such an offer is compatible with the stated project evaluation criteria. As DCAM's experience with LEED certification, Energy Star registration and other accreditation systems grows, it may provide further direction to ESCos and contractors relative to these items in its RFPs.

Project Implementation Phase

1. What is DCAM's track record to date in assuring performance by properly licensed trade subcontractors?

A. Under the DCAM's performance contracting program, it is the responsibility of the ESCo to monitor and insure the performance of their subcontractors. DCAM has generally been pleased with service provided by the ESCos and their subcontractors.

2. Does DCAM maintain a database of electric and gas utility rebate programs (statewide)? Are energy utilities generally interested in working with DCAM and ESCos on energy efficiency projects and providing incentive dollars?

A. DCAM works with the energy utilities of Massachusetts to improve the efficiency of the Commonwealth's buildings both through bond-funded projects and performance contracting projects. DCAM works to keep abreast of changes in utility incentive programs and does keep a database of those programs. In general, energy utilities are interested in providing incentive funds for efficiency improvements, regardless of project delivery method. NSTAR points out that, under new regulations, Comprehensive Design Approach (CDA) projects, which typically receive a higher level of incentive than prescriptive approach projects, require a Memorandum of Understanding (MOU) at their outset. For this reason there needs be coordination of the rebate process both during proposal development and project implementation.

3. Can DCAM assist ESCos in sequencing construction when multiple jobs go out in the same year?

A. ESCos are responsible for determining the implementation and construction schedule for their projects. Though DCAM works to issue project opportunities in a coordinated fashion, it is difficult to ensure that all companies will be able to provide adequate staffing and sequencing of effort across all projects.

Post-Installation Phase

1. *Will DCAM consider including maintenance savings in project cashflows in order to enable ESCos to provide more maintenance services?*
 - A. Under the legislation that enables DCAM to manage performance contracts for Commonwealth agencies, maintenance savings may not be included in the savings against which projects can be financed. However, in considering the value of a project to the user agency, DCAM does weigh issues of operation and maintenance as a factor in several of the primary evaluation categories.
2. *As it is difficult for ESCos to get efficiency guarantee bonds and they may be considered superfluous to other means of guaranteeing project savings, will DCAM consider changing their policy of requiring efficiency guarantee bonds?*
 - A. DCAM is presently evaluating various options for efficiency guarantee bonds including reducing the percentage of savings that needs to be covered by a bond, reducing the term required on efficiency bonds, allowing efficiency bonds to be phased-out over the term of a project, and accepting a letter of credit in lieu of guarantee bonds. Continued input from the ESCo community is welcomed as DCAM considers this issue. DCAM will keep the ESCo community informed of its position as it evolves.

Summary of Comments/Issues Submitted after Forum

1. *Communication from DCAM with the ESCos should be continued in a formal and predictable manner throughout the proposal review process. DCAM should keep the proposing ESCos informed of the progress of the selection process.*

A: DCAM makes every effort to provide adequate information to all ESCos and contractors throughout the review process, however, due to the large number of people often involved in evaluation, DCAM is not always able to meet its desired target dates for evaluation and selection of proposers. Going forward, DCAM will seek to keep to closer review timetables and improve its communication with our industry partners as to all due dates, interview schedules and follow-up, as well as ultimate awards, and the like.

2. *A qualifications-driven selection process is a good idea. DCAM should consider the specific strengths and weaknesses as well as preferences of companies in a “project preference profile” instead of a general qualification process so that smaller, niche-based ESCos do not have to compete with large, less limited ESCos for smaller and mid-sized projects.*

A: DCAM may consider qualifications-based selection processes for some future projects. DCAM understands the merit of such procedures for some project types or project groupings as well as the potential benefit to ESCos and contractors with specialized qualifications.

3. *DCAM should use and maintain a formal rating system of ESCos based upon feedback from previous state facility program participants.*

A: DCAM performs designer and contractor evaluations on all firms providing service to state facilities. Additionally, firm’s track records (on DCAM and other projects) is considered during the evaluation review of proposals.

4. *For smaller projects, guarantees might be stipulated and M&V performed by DCAM, or documentation provided by the ESCo following implementation that provides proof of guarantee, subject to verification by DCAM.*

A: DCAM asks all proposers to detail their M&V options and plans at the proposal stage. There is always the ability that some of the M&V be performed by DCAM and/or its user agency staff. DCAM is open to considering all range of M&V options and implementation plans provided that they provide the savings assurances necessitated by DCAM and its user agencies.

5. *To increase standardization and ensure quality of ECMs – engineers could be pre-qualified by DCAM under the energy saving Performance Contracting Program, such that ESCos may select from these engineers to partner for performance contracting work. These engineers would already have access to all DCAM forms and submittal formats, modeling software applications and everything else required under the program.*

A: DCAM expects that each proposing ESCo or contractor will provide proposals that they and their subcontractors are able to implement effectively. DCAM has no plans to pre-qualify engineers or engineering firms to be available to partner with ESCos.

6. *Operation and Maintenance issues.*
 - a. *ESCOs should own in-warranty service as part of the installation of all measures to ensure that the warranty will be intact and that, following the warranty period, all new equipment is turned over in “Original Design Performance” condition.*
 - b. *During the warranty period, the ESCo should be required to create formal maintenance tasking schedules for each measure, using manufacturer-recommended procedures, including specific tasks, service frequencies and procedures where necessary. Responsibility for each shown task should be assigned either to the ESCo, the facility, or a third-party provider.*
 - c. *Inspection reports as used by professional service companies, should be developed and all services recorded from the first date of operation. These Tasking Schedules and Inspection Reports should become property of the agency for which the energy saving project is being implemented. This documentation can become part of an existing service agreement, or be used to create a new process for maintaining all new equipment and measures.*
- A:
 - a. *ESCOs are expected to provide in-warranty service and to turn over equipment in optimal design condition.*
 - b. *ESCOs are expected to work with the facility to create maintenance tasking schedules for each ECM.*
 - c. *DCAM and its user agencies will consider the more routine use of inspection reports and tasking schedules for its performance contracts.*

All of the above issues may also be further addressed as part of a new commissioning program that will be implemented for all DCAM-issued performance contract projects going forward. The results of this program will eventually be formally integrated into all DCAM’s Performance Contracting projects and become part of the overall scope of the Energy Services Agreements.

7. *Will DCAM consider the following ideas to enhance participation and quality from the ESCo community?:*
 - a. *Use a multiple-project development process in which a “solicitation round” is announced for three+ projects simultaneously with some diversity of size. ESCos would position themselves for the project that represents their first choice. DCAM would utilize a multiple-project evaluation rating and ranking system, and, following evaluations and interviews, negotiate with the “top-rated” ESCo in the round for its project, the second-ranked ESCo is next in negotiations and so on.*
 - b. *Announce in advance the projects to be developed over the next year and use a project award quota limiting the number of projects a qualified ESCo can be awarded over a specified period or prohibit an ESCo that is already negotiating or implementing another project from bidding.*
- A. *While state law requires all procurements to be open and competitive, and DCAM can not prohibit a qualified, eligible company from submitting a proposal. DCAM has a sincere interest in delivering projects in a timely manner with significant and diverse*

participation from the ESCo community. In order to accomplish this, DCAM may consider a variety of bidding methods provided they are consistent with state law. Alternative project development methods could include offering multiple projects simultaneously, developing projects as a group or via a “solicitation round” as suggested. All of these alternative mechanisms for project delivery will be considered as DCAM develops future projects.

8. *Please distribute an attendance list from the meeting.*

A. An attendance list from the forum is included in the mailing of this document to participants in the forum and available on the DCAM web site, <http://www.state.ma.us/cam/statewide/sw-energyconserv02.html>.

9. *The requirement in Energy Saving RFPs for the ESCo to be certified under the Energy Management Services (EMS) category is restrictive and could prevent certain firms from submitting proposals. If the certification requirement included the HVAC or Mechanical Systems categories that would open the door for certain companies.*

A. The certification category established for each RFP is determined based on the scope of work in the RFP. DCAM’s goal is not to exclude qualified companies but rather to ensure that proposers have the necessary qualifications for the given project. (Two recent Energy Equipment RFPs issued required either the HVAC category or the Mechanical Systems category, and not the EMS category.)

10. *Will the state continue to require MBE/WBE participation or will they take Boston's lead?*

A. DCAM and the Commonwealth of Massachusetts are committed to supporting minority and women-owned business enterprises by requiring, where possible, that a portion of each project be awarded to such enterprises. As stated in DCAM’s Goals for Participation by Minority and Women Business Enterprises it is possible under certain circumstances for these requirements to be waved.

11. *As the time of year that projects are bid is critical, can DCAM ensure that the Notice to Proceed (NTP) is issued at least 8 months prior to the dates that equipment needs to be in operation?*

A. DCAM works with client agencies to ensure that their expectations for equipment installation and operation are realistic. This is to improve the chances of successful project delivery and the satisfaction of all parties involved. DCAM hopes to work in partnership with ESCos to deliver projects in a timely manner. It is not realistic that any minimum timeframe could be developed for the period from NTP to equipment operation.

12. *Is there a reason why Dodge isn't used to advertise bids?*

A. DCAM does not pay to advertise any state projects in Dodge, though some projects may be picked up and re-advertised in Dodge or other bid shops at the advertiser’s discretion.

13. A better understanding of TELP payments must be provided. At the Forum it still sounded like the equipment must be operational prior to payment being made. If this is the case, it should be stated up-front so that the contractor can carry the cost of financing the project.

A. On most Energy Projects, TELP payments are structured according to a Schedule of Values, whereby the contractor is paid for work in place and associated labor, not necessarily only for operational equipment. Each RFP issued will delineate the exact procedure for financing so that the company submitting a proposal will have advance knowledge of any financing necessary to satisfactorily complete a given project.